Supreme Court, U. S.
FILED
MAY 4 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-1609

THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,

Petitioner,

vs.

LOCAL 14055, UNITED STEELWORKERS OF AMERICA, AFL-CIO, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

The Chamber of Commerce of the United States of America, Intervenor[2] below, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled case.

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1. The National Labor Relations Board and the Dow Chemical Company were also parties in the proceeding before the Court of Appeals; pursuant to Supreme Court Rule 21(4) they are respondents with respect to this petition, although their interests are not adverse to the Chamber's.

2. The Chamber of Commerce was a charging party in the proceeding before the National Labor Relations Board, and based thereon was an Intervenor in the Court of Appeals.

OPINIONS BELOW.

The opinion of the Court of Appeals is reported at 524 F. 2d 853, ... U. S. App. D. C. ..... (D. P. 1a)[3]; its order denying rehearing by a vote of 5-4 (D. P. 24a) has not yet been reported. The opinion of the National Labor Relations Board is reported at 211 NLRB No. 59, 86 LRRM 1381 (D. P. 26a).

JURISDICTION.

The judgment of the Court of Appeals was entered on December 15, 1975. Rehearing was denied on February 4, 1976.

Jurisdiction to review the judgment in question by writ of certiorari is conferred upon this Court by 28 U. S. C. § 1254 and Section 10(e) of the National Labor Relations Act, as amended, 29 U. S. C. § 160(e).

QUESTION PRESENTED.

Whether the protection of the secondary boycott statute (29 U. S. C. § 158(4)(B)) extends to rehearing of a neutral employer to embroil him in a consumer boycott which has the foreseeable consequence of inducing customers to withhold all patronage or otherwise to disrupt the neutral's fundamental business operations in order to affect his relationship with the primary employer.

STATUTE INVOLVED.

The relevant provisions of Section 8(b)(4)(B) (29 U. S. C. § 158(4)(B)) of the National Labor Relations Act, as amended[4] are set forth below:

3. Because the opinion of Court of Appeals below, the order denying rehearing and the opinion of the NLRB are reproduced as an appendix to the Petition for Writ of Certiorari filed by the Dow Chemical Company those items are not reproduced here. The references "D.P." are to the page of the appendix to Dow's Petition.

4. 61 Stat. 136, 73 Stat. 519, 29 U. S. C. § 151, *et seq.*

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4) * * * (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

* * * * *

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person * * *:

* * * * *

Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed *to prohibit publicity other than picketing,* for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services at the establishment of the employer engaged in such distribution; * * *" (emphasis supplied)

STATEMENT OF THE CASE.

Commencing in February, 1972, the Respondent, Local 14055, United Steelworkers of America, AFL-CIO (hereinafter the "Union"), became engaged in a primary labor dispute with Bay Refining Division, Dow Chemical Company (hereinafter "Bay Refining"). In support of its dispute with Bay Refining, the Union picketed six independent retail gasoline stations that sold gasoline under the "Bay" logo and that prominently displayed signs indicating they were distributors of "Bay" fuel. The picket signs variously read, "Don't Buy Bay", "Dow Chemi-

cal Unfair to Union Labor", "Don't Buy Bay Gas" (A259, 272, 113-115, 19-20, 74).[5]

These six retail gasoline stations were owned and operated independently of Bay Refining and they conducted their own independent labor relations policies. The predominant product sold by these stations was Bay gasoline. Sales of this product accounted for between 80% and 98% of the gross revenues of five of the six stations with the remainder of the sales representing miscellaneous items and services generally incidental to the gasoline sales (A17, 23-25, 30-33, 73). For the sixth station, Alexander's, somewhat less than 50% of its revenue was from the sale of Bay gasoline.[6] The sale of gasoline was critical to the successful operation of all the stations including Alexander's since customers ordinarily purchased the other products and services as merely an incident to patronizing the stations for the purpose of buying gas (A66-68, 84).

A majority of the National Labor Relations Board, sitting *en banc*, found that the Union's conduct constituted "restraint and coercion" of the neutral gasoline stations to force or require them to cease handling the products of the primary employer, Bay Refining in violation of Section 8(b)(4)(B) of the Act. In considering the doctrine, announced by this Court in *Tree Fruits*,[7] that picketing of a product which constitutes an insubstantial part of a retailers business is not within the intendment of Section 8(b)(4)(B), the Board held that the circumstances of this case invoke different legal considerations Noting that *Tree Fruits* did not address itself to the boycott of a product which constituted the neutral retailers principal stock-in-trade, the Board was of the opinion that "we are at the very least required to make our own independent judgment . . ." on that issue (D. P. 35a). The Board used as its point of departure the distinction drawn in *Tree Fruits* between "peaceful consumer picketing to shut off all trade of the secondary employer" which constituted a clear violation of the Act, and picketing which only persuades customers not to buy one of many products marketed by the retailer which was held not unlawful. Applying a standard of economic realism, the Board determined that "the nature of the business and of the picketing" rendered the Union's picketing the equivalent of an appeal to customers "not [to] trade at all with the neutral party" (D. P. 35a). Relying upon the congressional intent to insulate neutral employers, such as the gasoline stations here, from the economic harm which stems from entanglement in labor disputes not their own, the Board found such conduct to be violative Section 8(b)(4)(B) of the Act.

On petitions for review and enforcement pursuant to 29 U. S. C. § 160(e) and (f), the court of appeals reversed the Board. In that court's view, the *Tree Fruits* doctrine protected all picketing which followed an identifiable struck product regardless of the economic impact upon the business of the neutral employer.

REASONS FOR GRANTING THE WRIT.

A. The Question Left Unresolved by Tree Fruits Has Created a Division of Opinion Among the Circuits.

As the Board's decision recognizes, the facts here give rise to the hard case not reached by this Court's opinion in *Tree Fruits*. In that case, the Court held lawful such picketing as was specifically addressed to consumers and which as a practical matter had the limited effect of inducing a boycott of a single

5. "A" refers to the record by page numbers of the Appendix filed by the Union in the proceeding below before the Court of Appeals for the District of Columbia.

6. Alexander's was the only one of the six service stations that sold other brands of gasoline. Its total revenues from the sale of gasoline, of all brands was between 60% and 65%. Alexander's unlike the other stations, was also a tire dealer which accounted for its higher percentage of revenues attributable to items other than fuel (A274).

7. *N. L. R. B.* v. *Fruit and Vegetable Packers Warehousemen, Local 760 (Tree Fruits Labor Relations Committee, Inc.)*, 377 U. S. 58 (1964).

product which was an insubstantial part of the neutral retailer's overall business. The Court's analysis did not specifically deal with the extent to which the surrounding circumstances (such as the impact of the picketing and the nature of the neutral's business) should be considered in determining whether a product boycott entails a secondary object proscribed by the Act. See *National Woodwork Manufacturers Ass'n* v. *N. L. R. B.*, 386 U. S. 612 (1967). However, it did clearly state that picketing which induced consumers to withhold *all* patronage would be proscribed. The instant case presents a factual situation in which although the Union's picketing in form is directed toward a single product, in substance its foreseeable effect is to call for a total cessation of patronage of the neutral. In *Tree Fruits*, the Court did not resolve the question of whether such conduct is proscribed.

The court of appeals below resolved this unanswered issue in a manner that was not only inconsistent with the *en banc* decision of the administrative agency charged with interpreting the Act, but with other appellate court decisions. Moreover, the division in this case among the judges of the District of Columbia Circuit, splitting 5-4 in denying rehearing is indicative of the need for authoritative guidance by this Court.

The court below rejected the Board's rationale that where, as here, the economic realities established that "the picketing was reasonably calculated" to induce consumers to withhold all patronage, such picketing was proscribed by the Act (D. P. 36a). In so doing, the court of appeals declined to follow the decisions not only of every other court of appeals to pass on the question,[8] but also the controlling principle formulated by

8. *Hoffman* v. *Cement Masons Union Local 337*, 468 F. 2d 1187 (9th Cir. 1972), *cert. den.*, 411 U. S. 986; *American Bread Company* v. *NLRB*, 411 F. 2d 147 (6th Cir. 1969); *NLRB* v. *Twin City Carpenters Dist. Council (Red Wing Wood Products, Inc.)*, 422 F. 2d 309 (8th Cir. 1970); *Salem Building Trades Council (Cascade Employers Ass'n)*, 163 NLRB 33, *enforced per curiam* 388 F. 2d 987 (9th Cir. 1968), *cert. den.* 391 U. S. 965 (1968).

another panel of the same circuit. Thus, that court in *Honolulu Typographical Union* v. *NLRB*, 401 F. 2d 952, 956 (1968), held that the legality of picketing to induce a product boycott depended upon the actual economic effect upon the secondary, stating:

> "The short answer, however is that the law makes distinctions in terms of the traditional and *economic realities* of Union pressure, even though this may result in differences not easily subject to logical delineation between the scope and kinds of picketing available to union in different labor circumstances.
>
> Here, *where picketing means a total boycott*, one interest must plainly yield, either the Union's desire to maximize pressure on the primary employer (the newspaper) by cutting off its markets or the neutral's desire to avoid a boycott of his entire business. In the 1959 amendments, Congress chose protection of the neutrals from this sort of disruption as the interest more deserving of protection. Indeed, the Supreme Court so stated in *Tree Fruits* when it characterized as one of the 'isolated evils' barred by § 8(b)(4)(ii)(B), *'picketing which persuades the customers of a secondary employer to stop all trading with him'.*" *Supra*, 277 U. S. at 71 (Emphasis supplied.)

Accord: *American Bread Co.* v. *NLRB*, 411 F. 2d 147, 154 (6th Cir. 1969), holding that in applying the *Tree Fruits* doctrine, the proper focus of attention is not on the "supposed form, but the reality of the picketing"; *NLRB* v. *Twin City Carpenters Dist. Council*, 422 F. 2d 309, 314 (8th Cir. 1970), holding that the legality of consumer picketing "depends upon the probable effect of the union appeal on the consumer".

Although the court of appeals below would distinguish *Honolulu Typographical* and *American Bread* on the grounds that the picketing in each of those cases sought to follow a product that had been integrated into a larger whole, that is a distinction without legal consequence. Whether the ultimate product is integrated or whether, as here, the product is the key inducement to customers, the controlling legal principle dictates the same result.

In either case, the foreseeable consequences of picketing is to induce a total boycott of the neutral's business. In any event, other conflicting decisions by sister circuits are not so distinguishable. Both *Hoffman* v. *Cement Masons Union, Local 337* and *Salem Building Trades Council, supra,* footnote 8, held unlawful picketing that boycotted the sole product marketed or used by a neutral on the grounds that such constitutes an appeal to customers to sever all patronage. In none of the foregoing decisions can the rationale be reconciled with the decision of the court below.

The disagreement among the courts of appeals on this issue is of serious moment to a large sector of the labor-management community. It leaves the law unsettled with respect to a wide variety of circumstances in which labor disputes may arise. Thus, many types of product lines such as automobiles, automobile parts, tires, mufflers, dairy products and countless others are marketed through retail outlets which sell that one line of products or which principally sell such product line. There is an urgent need for the Court to grant certiorari in this case so as to lay to rest a question having such wide-spread consequences.

B. The Scope and Underlying Premise of Tree Fruits Bears Re-examination.

Beyond the need to resolve the conflict within the federal judiciary, this case exemplifies the need to re-examine one of the fundamental tenets of the *Tree Fruits* doctrine. One of the underlying premises of that decision is that picketing that merely follows a struck product would not have the "coercive" effect contemplated by the statute upon the neutral retailer. The Court reasoned that a successful product boycott of this kind would only diminish the secondary employer's sales of the struck product, without significantly dislocating his business operations and therefore without creating "a separate dispute with the secondary employer" (*Tree Fruits supra.*, 377 U. S. at 72).

Explaining further, the Court said:

> "For example: If a public appeal [by a union] directed only at a product results in a decline of 25% in the secondary employer's sales of that product, the corresponding reduction of his purchases of the product is due to his inability to sell any more. But if the appeal is broadened to ask that the public cease all patronage, and if there is a 25% response, the secondary employer faces this decision: whether to discontinue handling the primary product entirely, even though he might otherwise have continued to sell it at the 75% level, in order to prevent the loss of sales of other products." *Ibid.*, 377 U. S. at 72, footnote 20.

In other words, the Court assumed that picketing directed at a single product would not place stress on the neutral's entire business operations.

However, it appears that the Court failed to take into account the myriad circumstances in which such a product boycott would dislocate the neutral retailer's entire operation. One such circumstance, already alluded to, is that in which the retail merchant specializes in a single product or line of products, even though as here, he may sell other items incidental to the main product line. Another such circumstance is where, although a merchant sells different products, he is so dependent upon the picketed product that a consumer boycott of that product will disrupt fundamental aspects of his business operation. Alexander's which depends on Bay gasoline for 50% of its total sales, suggests such a situation. Another example would be a department store which has traditionally advertised a well-known brand of men's or women's suits. Such a retailer may well find that it is not feasible to merely abandon the struck product for the course of the labor dispute, because it has already made a substantial commitment in inventory, in advertising and in customer relations to the use of the product. Product picketing in those instances strikes at the heart of the neutral's operation and in effect creates a separate dispute between

the union and the neutral party whom the statute was designed to protect.

These considerations did not enter into the Court's analysis apparently because it was focusing on an entirely different situation presented by the boycott of Washington apples which constituted only an insignificant portion of Safeway's retail business. However, the Court's failure to appreciate the potentially serious disruption of the neutral's business is of critical importance. Thus, the Court based its holding upon its perception that the legislative history did not clearly specify that the boycott of a single product was coercive conduct of the kind proscribed by the statute.

Nevertheless, subsequent decisions of this Court have construed the congressional intent to broadly encompass the protection of a neutral's business from injury due to labor disputes not his own. Thus, in *National Woodwork Manufacturers Assn.* v *NLRB*, 386 U. S. 612, 624 (1967), the Court quoted, 624 (1967), approvingly Senator Taft's explanation of the 1947 amendments that Section 8(b)(4)(B) was designed to prohibit "a secondary boycott to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and his employees."[9]

Moreover, as the Court stated in *NLRB* v. *Local 825 International Union of Operating Engineers*, [*Burns and Roe*], 400 U. S. 297, 305 (1971): where "the foreseeable consequences of its secondary pressure [are more than] slight" and "the clear implication" of the union's conduct was "to bring . . . the [neutral] employers to their knees" in order "to force a change in [the primary's] policy", the conduct comes within the statutory ban. Where, in the case of a product boycott, there results an extensive dislocation of the neutral's business, such injury would seem to fall within the proscribed zone intended by Congress.

9. 93 Cong. Rec. 4198, II Legis. Hist. of the Labor-Management Relations Act of 1947, 1106.

Further cogency is added to these reasons for re-examination, by the criticism of Court's interpretation of the legislative intent on the grounds that it is attenuated. Even though the literal language of the statute encompassed all consumer-product picketing and even though the Court acknowledged no showing in the legislative history of an intent to exempt such conduct, the Court presumed that Congress intended such an exemption *absent* any unequivocal statement of an intent to prohibit that conduct. With respect to this analysis of the legislative history by the Court, one commentator has concluded, "The reasoning of the opinion in *Tree Fruits* appears to be inadequate to support the result reached." "Consumer Picketing the Court—the Questionable Yield of Tree Fruits," T. P. Lewis, 49 Minn. L. Rev. 479, 504 (Jan., 1965). Accord, dissent of Mr. Justice Harlan, *Tree Fruits, supra*, 377 U. S. at p. 80. The decision has also been criticized on the grounds its rationale, discussed above, affords no clear guidance as to its scope and applicability in other cases.[10]

Although the Court indicated that unspecified constitutional doubts may have influenced it to read the legislative history as narrowly as it did, there would seem to be no basis for doubts of the legislature's authority to regulate such picketing. See *IBT, Local 695* v. *Voght, Inc.*, 354 U. S. 284 (1957); (1976): "Secondary Consumer Picketing." *supra*, 44 Tulane L. Rev. at 540, f. n. 13. Also as Justice Harlan stated in his dissent (*Tree Fruits, supra*, 377 U. S. at p. 93), because the proviso to Section 8(b)(4)(B) permits alternative forms of communica-

10. "Secondary Consumer Picketing: Some Graphs on *Tree Fruits*," 44 Tulane L. Rev. 537 (April 1970), wherein the author analyzed the myriad circumstances in which neutrals would be substantially injured by product picketing, and concluded:

> "An ultimate clarification through judicial or legislative action is inevitable. It is difficult to see how any attempt at judicial clarification, without the overruling of *Tree Fruits*, can avoid further confusion."

Ibid. at 556.

tion, other than picketing, to advise the public of the Union's dispute with the producer of a struck product, no First Amendment problem is involved. In subsequent decisions, this Court has indicated approval of this view. Compare, *Amalgamated Food Employees Union, Local 590* v. *Logan Valley Plaza, Inc.*, 391 U. S. 308 (1968) with *Scott Hudgens* v. *N. L. R. B.*, ... U. S. ....., 91 LRRM 2489 (1976), overruling *Logan Valley*.

Because of the problems that have emerged since the *Tree Fruits* decision, both with respect to its underlying premises and the lack of guidance with respect to its scope, reconsideration at this time is warranted.

CONCLUSION.

For all of the foregoing reasons it is respectfully requested that a writ issue.

Respectfully submitted,

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INTRODUCTION

Petitioner Chamber of Commerce files this response to Respondent Steelworkers' "Suggestions of Mootness" to supplement the letter by the undersigned Counsel to the Honorable Robert H. Bork, Solicitor General, appearing as Appendix A in the Government's Petition No. 75-1858.

The Petitioner Chamber of Commerce fully concurs with the National Labor Relations Board that the *de facto* existence of the Union should be resolved at the compliance stage of this

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* All documents reproduced in the Supplemental Appendix appear in their entirety in the "Addendum to Supplemental Appendix" filed with the Clerk of the Court and served upon all Counsel of record. For a further description of the documents contained in the Supplemental Appendix and the Addendum to Supplemental Appendix, see Supplemental Appendix, page 1.

case. (*Southport Petroleum Co.* v. *N.L.R.B.*, 315 U.S. 100, 105 to 107.) In further support of the *de facto* existence of the Union, Petitioner will show that the International Union, even if the Local has been dissolved, remains and has at all times been its successor and alter ego. The International has in fact been the collective bargaining representative since the merger with the International of District 50. The continuing *de facto* existence of the Union will be shown through matters of record in collateral proceedings.

THE STEELWORKERS INTERNATIONAL IS AND HAS BEEN THE ALTER EGO OF THE LOCAL

The Chamber of Commerce of the United States, Petitioner herein, respectfully submits that the "Suggestions of Mootness" of the Union are wholly without merit, even accepting the existence of the communications not of record, allegedly dissolving its own Local which is claimed to have the effect of absolving the Steelworkers International of all responsibility, and therefore arguably mooting the instant case. The incontrovertible facts of record in collateral proceedings indicate that the Steelworkers International is performing and has at all times since the merger, performed the institutional functions of Local 14055, including the representation of the members of Local 14055 in all pending and continuing litigation. So that even if an Agent, the Local, has been dissolved, the International, as the principal, remains as its present successor and *alter ego.*

United Steelworkers of America, AFL-CIO (hereinafter referred to as "Steelworkers International") became involved as collective bargaining representative for the employees of Dow Chemical Company, Bay Refining Division, Refinery (hereinafter referred to as "Dow") as a result of a merger in 1972 with District 50, United Mine Workers of America. According to the terms of the Merger Agreement, the Steelworkers International rather than Local 14055 assumed the

collective bargaining responsibilities of the District 50 *International* and has at all other times since been the alter ego of Local 14055 and its members. The relevant terms of the merger provided:[1]

> "All powers, rights, privileges, benefits, authority, duties and responsibilities vested in District 50 pursuant to such bargaining rights and certifications; and pursuant to such collective bargaining agreements and checkoff provisions and authorizations to which District 50 is a party or beneficiary as of said date, and the right to enforce same, *shall be vested in the Steelworkers as though it and not District 50 had originally been named as a party thereto or beneficiary thereof.*" (Emphasis added)[2]

The collective bargaining agreement in effect at the time of the merger was between Dow Chemical and the *International* of District No. 50.[3]

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[1] The Merger Agreement between United Steelworkers of America and the International Union of District 50, Allied and Technical Workers of the United States and Canada, appears as Exhibit 3 in *Cefalo* v. *Moffett*, U.S. D.C. for the District of Columbia, April, 1972), 67 CCH Labor Cases §12,468, where the said District Court specifically approved on remand the Merger Agreement (Supp. App. pages 16a to 24a) (See also *Cefalo* v. *Moffett*, 333 F. Supp. 1283 (D.D.C. 1971), modified on appeal, 449 F.2d 1193 (D.C. Cir. 1971).

[2] See Supp. App. page 21a (Article V, paragraph 1 of Merger Agreement). It is important to note that paragraph 2 of Article V of the Merger Agreement (Supp. App. page 22a) covering transfer of bargaining rights exclusively to a Local is not applicable in the instant case.

[3] This collective bargaining agreement, signed by Elwood Moffett, President, International District 50 (see Supp. App., page 15a) and providing that checkoff and dues shall be remitted to the International Union District 50 in Washington, D.C. (Supp. App. page 13a) confirms that the bargaining relationship which existed prior to the merger was with the *International* of District 50. Therefore, paragraph 1 of Article V (Supp. App., page 21a) transfers the bargaining relationship to the Steelwórkers International.

Since the merger, the Steelworkers *International* has in fact been the collective bargaining representative[4] and functioned as alter ego of Local 14055 in the "pending law suits." The Chamber of Commerce has already called the Solicitor General's attention to one of these law suits involving the legality of state and welfare benefits to strikers (*Dow Chemical* v. *Taylor*), where the Steelworkers International intervened to represent the interests of the Local and its members. (See Appendix B of Petitioner N.L.R.B.'s Petition No. 75-1858). In *Dow* v. *Taylor* the intervention is signed by the General Counsel of the United Steelworkers of America, as well as their District Counsel, Allen Kovinsky. (See Petitioner N.L.R.B.'s Appendix, page 18a. This intervention is accordingly consistent with the Steelworkers International's assumption of responsibilities pursuant to the Merger Agreement. Another pending law suit involving Dow's challenge to the unemployment payment to strikers, *Bridgewater* v. *Dow*,[5] again shows Allen Kovinsky signing as "District Counsel of the United Steelworkers of America, AFL-CIO" in the Complaint. (Supp. App., page 7a).

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[4] The Complaint in *Bridgewater* v. *Dow* (fn 5 *infra*) corroborates the Steelworkers International being the collective bargaining representative.

> "On or about February 7, 1972, the above named Plaintiffs were represented by the United Steelworkers of America, AFL-CIO-CLC, and were parties to a collective bargaining agreement between the said Dow Chemical Company and the United Steelworkers of America, AFL-CIO-CLC." (Supp. App., page 5a ¶3).

See also: The quote from Mr. Kovinsky's Brief top of page 6 infra.

[5] The affidavit of Robert J. Finkel for Dow in *Bridgewater* v. *Dow*, *Bridgewater* v. *Appeal Board of Michigan and Dow Chemical*, No. 75 17797 AE in the State of Michigan in the Circuit Court for the County of Ingham, sets forth that the Bridgewater case has been proceeding since the fall of 1972, and the brief filed by Allen Kovinsky as District Counsel for the Steelworkers International was in support of an appeal from a favorable decision rendered by the Michigan Employment Security Commission Appeal Board on or about June 27, 1975 (Supp. App., pages 2a and 3a)

Petitioner respectfully suggests that reference to "pending law suits" in the initial imposition of the administratorship by Steelworkers International's President, I. W. Abel (Respondent Union's Appendix, page 13a), refers to the *Dow* v. *Taylor* case, the *Bridgewater* v. *Dow* case and the instant case. As the Steelworkers International continues to defend these law suits, the affidavit of George Watts (Respondent Union's Appendix A) in support of the "Suggestions of Mootness" attempting to explain away the term "pending law suits," and substitute therefor a single administrative proceeding before the N.L.R.B., must be discounted.[6]

The Respondents, in their "Suggestions of Mootness" also attempt by evidence not of record, to suggest that the Steelworkers' strike against Dow is no longer in progress.[7] To the extent that facts concerning the continuing existence of a strike may have any bearing on a mootness question, such evidence is appropriately examined at the compliance stage under *Southport Petroleum, supra*. Subsequent to the signing of the George Watts affidavit,[8] filed in support of the Steelworkers' "Suggestions of Mootness," Steelworkers District Counsel, Allen Kovinsky in his brief in support of the appeal in *Bridgewater* v. *Dow*, dated August 4, 1976 (Supp. App., page 10a) states in the opening paragraph:

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[6] George Watts, apparently in error, states:

> "At that time the only 'open' issue under consideration was whether or not to appeal the Board's decision in favor of Dow in 217 NLRB No. 17. (Respondent Union's Appendix 4a, paragraph 10)

[7] The Steelworkers' basis for suggesting that the strike is contained in the affidavit of George Watts. (Respondent Union's Appendix, page 3a, paragraphs 6, 7 and 8.)

[8] George Watts' affidavit was signed July 27, 1976, (Respondent Union's Appendix 12a).

"On February 7, 1972, claimants went on strike because of a labor dispute at the Dow Chemical Company located in Bay City, Michigan. The claimants were represented by their duly authorized bargaining agent, United Steelworkers of America, AFL-CIO-CLC, and were parties to a collective bargaining agreement between the employer and the union which expired on January 17, 1972. *The strike is still in progress at this point in time.*" (Emphasis added) (Supp. App., page 9a)

CONCLUSION

The Steelworkers International has at all times relevant hereto been the collective bargaining representative for the employees involved in the strike at Dow's Bay City facility. It is fair to say Local 14055 enjoyed no rights or identity separate and apart from the Steelworkers International. As the collective bargaining representative, the Steelworkers International is responsible for authorized strike and picketing activity. The Steelworkers International, through their General Counsel and District Counsel, has in fact defended and continues to defend the pending law suits involving the question of unemployment payments to strikers. The most recent statement from their District Counsel is that, "The strike is still in progress . . ." Even assuming that the Local's charter has been properly revoked, the continuation of the strike subsequent to such revocation must be by the International.

The Chamber submits that collapsing of Local 14055 must be deemed to be an empty act where the Steelworkers International has at all times been the alter ego, or principal, and the best one can conclude is that the Local was its agent.

For all the foregoing reasons, Petitioner respectfully requests the Court to disregard the Union's "Suggestions of Mootness" and grant the Petition for *Certiorari* so that the important and recurring questions raised[9] may be reviewed by this Court.

Respectfully submitted,

GERARD C. SMETANA,
THOMAS CANAFAX, JR.
BOROVSKY, SMETANA, EHRLICH & KRONENBERG
2011 Eye Street, N.W.
Suite 800,
Washington, D.C. 20006,
Attorneys for the Petitioner.

LAWRENCE B. KRAUS,
General Counsel
RICHARD O'BRECHT
Labor Relations Counsel,
Chamber of Commerce of the
United States of America,
1615 H Street, N.W.,
Washington, D.C. 20006

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[9] The Respondent Union agrees that . . . "the question posed here is an important one". ("Suggestions of Mootness", page 10)

APPENDIX

DESCRIPTION OF SUPPLEMENTAL APPENDIX AND "ADDENDUM TO SUPPLEMENTAL APPENDIX."

All documents reproduced in the Supplemental Appendix appear in their entirety in the "Addendum to Supplemental Appendix" filed with the Clerk of the Court and served upon all Counsel of record.

The Supplemental Appendix contains the following documents:

1. Affidavit of Robert J. Finkel. (Supp. App. pages 2a through 3a)

2. The Complaint in *Bridgewater* v. *Appeal Board of Michigan and Dow Chemical*, No. 75 17797 AE in the State of Michigan in the Circuit Court for the County of Ingham. Said Complaint, identified in the Finkel affidavit, consists of Exhibits A, B, and C reproduced in their entirety in the Addendum to the Supplemental Appendix. (Supp. App. pages 4a through 7a)

3. Brief in support of plaintiff in *Bridgewater* (supra), identified as Exhibit B in the Finkel affidavit. Said brief appears in its entirety in the Addendum to the Supplemental Appendix. Only the cover page and pages 1 and 21 (the signature page) are reproduced in the Supplemental Appendix. (Supp. App. pages 8a through 10a)

4. Collective Bargaining Agreement between Dow and International District 50 appears in its entirety in the Addendum to Supplemental Appendix. Reproduced in the Supplemental Appendix is the cover page of said agreement, pages 6, 7, 50 and 51. (Supp. App. pages 11a through 15a)

5. The Merger Agreement filed as part of the Addendum shows reproductions of the signatures of the International officers of the United Steelworkers of America and the International Union of District 50. Except for the reproduction of signatures, the Merger Agreement in the Supplemental Appendix is complete. (Supp. App. pages 16a through 24a)

AFFIDAVIT

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.:

ROBERT J. FINKEL, being first duly sworn deposes and says as follows:

1. That he is a partner in the law firm of LEVIN, LEVIN, GARVETT and DILL and in such capacity has, and is currently representing The Dow Chemical Company in proceedings involving the payment of unemployment compensation benefits to employees who went on strike on February 7, 1972 against The Dow Chemical Company at its Bay City facility.

2. That of the approximately 179 strikers at said facility, all of whom were members of Local 14055 of the Allied Technical Workers, District 50 which subsequently merged with the United Steelworkers, approximately 144 of these strikers filed unemployment compensation claims with the Michigan Employment Security Commission.

3. That hearings were conducted throughout the Fall of 1972 concerning the unemployment compensation claims of the aforesaid strikers before a referee of the Michigan Employment Security Commission and at such hearings all of the claimants were legally represented by Allen J. Kovinsky of the law firm of Kasoff, Young, Gottesman, Kovinsky, Friedman and Walkon.

4. That The Dow Chemical Company in 1973 appealed all adverse decisions rendered against it by the referee in the above-mentioned proceedings to the Appeal Board of the Michigan Employment Security Commission and during such proceedings all claimants involved therein were legally represented by Allen J. Kovinsky of the law firm of Kasoff, Young, Gottesman, Kovinsky, Friedman and Walkon.

5. That a favorable decision rendered in Dow's behalf by the Michigan Employment Security Commission Appeal Board on or about June 27, 1975 was appealed to the Ingham County Circuit Court on behalf of the striking employees of The Dow Chemical Company by Allen J. Kovinsky on or about July 10, 1975. A copy of said appeal in the form of a complaint is attached hereto as Exhibit A.

6. That affiant is informed and believes that all striking claimants employed at The Dow Chemical Company's Bay City facility during the 1972 strike and currently involved in the Ingham County Circuit Court proceedings regarding the payment of unemployment compensation benefits are presently being represented by Allen J. Kovinsky of the law firm of Kasoff, Young, Gottesman, Kovinsky, Friedman & Walkon as demonstrated by the brief served upon affiant by Mr. Kovinsky in August, 1976 attached hereto as Exhibit B.

Further affiant saith not.

/s/ ROBERT J. FINKEL
Robert J. Finkel

Subscribed and Sworn to before me
this 24th day of August, 1976

/s/ Laurel O. Seale
Laurel O. Seale, Notary Public
Macomb County, Michigan
(Acting in and for Wayne County)
My Commission Expires: 11-13-76

EXHIBIT A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GERALD L. BRIDGEWATER, et al,
(See attached list of Plaintiffs),

Plaintiffs,

-vs-

THE APPEAL BOARD OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, and THE DOW CHEMICAL COMPANY, a foreign corporation,

Defendants.

Civil Action No.

75 177997 AE

ALLEN J. KOVINSKY (P16179)
Attorney for Plaintiffs

COMPLAINT

Now come GERALD L. BRIDGEWATER, et al, (see attached list of Plaintiffs) by KASOFF, YOUNG, GOTTESMAN, KOVINSKY, FRIEDMAN & WALKON, P.C., their attorneys, and file this Complaint in the nature of an appeal from the decision of the Appeal Board of the Michigan Employment Security Commission and in support of said Complaint and appeal say unto this Honorable Court as follows:

1. Gerald L. Bridgewater and the attached list of Plaintiffs were all employees of the Dow Chemical Company, one of the Defendants herein.

2. That the Appeal Board of the Michigan Employment Security Commission and the Michigan Employment Security Commission are statutory bodies as provided for under the terms of the Michigan Employment Security Act and the Dow Chemical Company is an employer within the meaning of the Michigan Employment Security Act.

3. On or about February 7, 1972, the above named Plaintiffs were represented by the United Steelworkers of America, AFL-CIO-CLC, and were parties to a collective bargaining agreement between the said Dow Chemical Company and the United Steelworkers of America, AFL-CIO-CLC.

4. On or about February 7, 1972, the claimants, as a result of actions taken by the employer, began withholding their services from employment with the said employer and continued to do so for the periods of time in question.

5. On subsequent and diverse dates each of the above named claimants became eligible for unemployment compensation benefits by obtaining employment with diverse employers other than the Dow Chemical Company and were subsequently laid off by those employers, thus qualifying for unemployment benefits in accordance with the decision of the Michigan Supreme Court enunciated in *Great Lakes Steel* v. *Employment Security Commission*, 381 Mich 249.

6. Each of the claimants filed timely claims with the Michigan Employment Security Commission and the Michigan Employment Security Commission issued determinations and redeterminations through their multi-claim unit granting each of the claimants benefits.

7. Dow Chemical Company appealed from the redetermination of the Michigan Employment Security Commission and requested a hearing before a reference of the Michigan Employment Security Commission.

8. Subsequently, a referee of the Michigan Employment Security Commission heard the testimony of each of the claimants and Plaintiffs herein, as well as the testimony of the Dow Chemical Company and its witnesses, and issued a decision granting each of the Plaintiffs and claimants herein benefits.

9. The Dow Chemical Company appealed said referee's decision to the Appeal Board of the Michigan Employment Security Commission and the Appeal Board of said Commission, after oral arguments and the filing of Briefs, issued its decision, which is attached hereto and incorporated herein by reference as Exhibit A. Said decision was identical in the case of each of the said Plaintiffs and claimants, whose names are attached hereto as Exhibit B.

10. The decision of the Appeal Board of the Michigan Employment Security Commission is clearly erroneous and contrary to the facts and law for the following reasons:

(a) The said decision is contrary to the decisions of the Michigan Court of Appeals and the Michigan Supreme Court in the case of *Great Lakes Steel v. Employment Security Commission*, 381 Mich 249.

(b) The decision of the Appeal Board of the Michigan Employment Security Commission violates the Constitution of the State of Michigan in that it denies each and every one of the Plaintiffs and claimants herein equal protection of the laws and due process.

(c) The decision of the Appeal Board of the Michigan Employment Security Commission also violates the Constitution of the State of Michigan with regard to the operation of powers in that said decision constitutes legislation by the Appeal Board which is solely the function of the Michigan House of Representatives and the Michigan Senate.

WHEREFORE, each and every one of the above named Plaintiffs and claimants pray that this Court, upon hearing of the matter, enter its Order reversing the decision of the Appeal Board of the Michigan Employment Security Commission and, further, that this Court order the Appeal Board of the Michigan Employment Security Commission to grant each and every one of the Plaintiffs and claimants herein the benefits to which they are entitled as well as awarding the Plaintiffs and claimants herein costs and attorney fees so unjustly sustained.

KASOFF, YOUNG, GOTTESMAN,
KOVINSKY, FRIEDMAN & WALKON, P.C.

/s/ ALLEN J. KOVINSKY

ALLEN J. KOVINSKY (P16179)
District Counsel
United Steelworkers of America,
AFL-CIO-CL
600 Travelers Tower
Southfield, Michigan 48076
Telephone: (313) 354-7400

Dated: July 10, 1975

EXHIBIT B

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GERALD L. BRIDGEWATER, et al,

Plaintiffs,

-vs-

THE APPEAL BOARD OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, and THE DOW CHEMICAL COMPANY, a foreign corporation,

Defendants.

Civil Action No. 75 17797 AE

Judge James T. Kallman (P15660)

ALLEN J. KOVINSKY (P16179)
Attorney for Plaintiff

BRIEF IN SUPPORT OF PLAINTIFFS

KASOFF, YOUNG, GOTTESMAN, KOVINSKY, FRIEDMAN & WALKON, P.C.
By: ALLEN J. KOVINSKY
District Counsel
United Steelworkers of America, AFL-CIO-CLC
600 Travelers Tower
Southfield, Michigan 48076
Telephone: 354-7400

STATEMENT OF THE CASE

On February 7, 1972, claimants went on strike because of a labor dispute at the Dow Chemical Company located in Bay City, Michigan. The claimants were represented by their duly authorized bargaining agent, United Steelworkers of America, AFL-CIO-CLC, and were parties to a collective bargaining agreement between the employer and the union which expired on January 17, 1972. The strike is still in progress at this point in time.

Subsequent to the commencement of the strike, claimants filed an application for unemployment benefits with the Michigan Employment Security Commission. The Commission then issued a determination which held that the claimants were disqualified for benefits under Subsection 29(8)(a)(II) of the Employment Security Act as a result of their participation in the labor dispute.

However, on subsequent and diverse dates following the strike each claimant obtained interim employment with employers other than the Dow Chemical Company. From this employment each claimant was laid off due to a lack of work available. Thus, unemployment was not due to the labor dispute with Dow, but the result of losing the subsequent interim employment, terminating the labor dispute disqualification. The Commission then issued determinations and redeterminations through their multi-claim unit granting each of the claimants benefits.

Dow subsequently appealed to a referee of the Michigan Employment Security Commission. The referee held that under the Michigan Supreme Court's landmark decision in *Great Lakes Steel* v. *Employment* applied MCLA 421.29(8) to the facts before them and that the resulting decision by the Board was contra to *Great Lakes*, the controlling case law in the absence of statutory mandate. Your circuit court held that the

1974 amendment to Section 29(8) was to be applied prospectively only, and that claimants, pursuant to their interim employment, were entitled to unemployment compensation as the referee had granted.

Given the broad policy of the Act to grant benefits and the tendency by the courts to construe narrowly the Section 29 disqualification provision, Dow bears an insurmountable burden of proving disqualification under *Great Lakes*. The circuit court for the County of Ingham must exercise its authorized power to overturn the decision of the Appeal Board and reinstate the referee's decision allowing benefits to the claimants according to *Great Lakes* doctrine and your decision in *Coca-Cola*.

Respectfully submitted,

KASOFF, YOUNG, GOTTESMAN,
KOVINSKY, FRIEDMAN & WALKON, P.C.

/s/ ALLEN J. KOVINSKY

ALLEN J. KOVINSKY
District Counsel
United Steelworkers of America
600 Travelers Tower
Southfield, Michigan 48076
Telephone: 354-7400

Dated: August 4, 1976

AGREEMENT

between

THE BAY CITY PLANTS

of

THE DOW CHEMICAL COMPANY

and

INTERNATIONAL UNION
DISTRICT 50, LOCAL 14055
UMWA

JANUARY 20, 1969

PREAMBLE

This Agreement by and between THE BAY CITY PLANTS of The Dow Chemical Company, hereinafter referred to as the "Company", and INTERNATIONAL UNION, DISTRICT 50, LOCAL 14055, UMWA, hereinafter referred to as the "Union", is entered into at Bay City, Michigan and made effective as of January 20, 1969.

WITNESSETH—It is the intent and purpose of the parties hereto that this Contract shall promote and improve industrial and economic relationships between the affected employees, the Union, and the Company and to herein set forth a working agreement to the end that strikes, shutdowns, and all measures of force and intimidation of whatever kind may be eliminated, and the spirit of industrial peace and cooperation maintained. Therefore, the Company and the employees as represented by the Union, together set forth herein the basic agreement covering rates of pay, hours of work, and conditions of employment to be observed by the parties.

RECOGNITION

SECTION 1, BARGAINING UNIT

The Company recognizes the Union as the sole and exclusive bargaining agency in respect to wages, hours, and other working conditions for all hourly paid employees of the Company at its Bay City Plants and the Company's related pipe line operations, whether such employees are employed regularly or temporarily, excluding however, all superintendents, assistant superintendents, supervisors, foremen, plant protection employees, and all other salaried employees, which excluded employees shall not be eligible for membership in the Union.

SECTION 2, UNION SHOP

It shall be a condition of employment that all employees of the Company covered by this Agreement who are members of the Union in good standing on the effective or execution date of this Agreement, whichever is later, shall remain members in good standing and those who are not members on the effective or execution date of this Agreement, whichever is later, shall on the thirtieth day following the effective or execution date of this Agreement, whichever is later, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its effective or execution date, whichever is later, shall on the thirtieth day following the beginning of such employment become and remain members in good standing in the Union.

SECTION 3, UNION MEMBERSHIP

Any question arising over Union Membership shall be presented by the Financial Secretary of the Union to the Personnel Department of the Company in writing, after which it may become subject to grievance procedure.

SECTION 4, CHECK OFF

Upon receipt of properly signed initiation fees, special assessments, and dues authorization cards, the Company agrees to deduct the amounts specified by the Union and remit same to International Union District 50, U.M.W.A., 4880 MacArthur Boulevard, N.W., Washington, D.C., 20007.

The Union hereby agrees to fully protect the Company against any liabilities resulting from such deductions of initiation fees, dues and special assessments. Such deductions will be made only as long as the Company may legally do so.

SECTION 5, RESPONSIBILITIES

The Company agrees that it will not discriminate in any manner against any person in its employ by reason of his membership and activity in the Union, and the Company further agrees it will not in any way interfere with the organization of the Union and that it will not commit any act calculated to undermine the Union. The Union agrees that it will use its best efforts to cause the employees, individually and collectively, to perform and render loyal

[em]ployees in meeting their expenses while suffering from illness or accident. Any employee submitting a claim based on a false statement, or covering a period during which the employee was not actually disabled will be considered as abusing the sick leave privilege. Any employee abusing these privileges will be subject to disciplinary action.

DURATION

SECTION 81, DURATION

This Agreement shall continue in full force and effect from January 20, 1969, at 8:00 a.m. to January 17, 1972, at 8:00 a.m. during which period neither party may open this Agreement for negotiation on any issue either economic or non-economic.
EXCEPTION: If the United States Department of Labor, Bureau of Labor Statistics, the Consumer Price Index, 1957-59, reaches 144.4 on or before October 1, 1970, either party may then within thirty (30) days of publication of the BLS Index give notice to the other party of the desire to negotiate with respect to straight time hourly base rates to be made effective at 8:00 A.M., January 18, 1971. If such notice is given the parties shall meet within thirty (30) days to negotiate with respect to wages.

IN WITNESS WHEREOF, The Company by its duly authorized Officer and Committee, and the employees, by their duly authorized International Representatives and the Bargaining Committeemen have hereunto signed their names on the 25th day of January, 1969.

INTERNATIONAL UNION, DISTRICT 50, UMWA

Approved:

Elwood Moffett, President
International District 50, UMWA

Harold Bowers
Regional Director

Dale Purtell
Representative

LOCAL 14055
UNION COMMITTEE

Robert Weigle,
President

John T. Bukowski,
Vice-President

Thomas G. Pomaville

Richard O. Pacholke

Raymond I. Arnot

BAY CITY PLANTS
THE DOW CHEMICAL COMPANY

By: K. E. Coulter, Manager

R. S. McClurg

Frank J. Neering

Stuart A. Milster

Dewitt H. Smallridge

E. P. Bullock

Donald G. Plambeck

MERGER AGREEMENT BETWEEN THE UNITED STEELWORKERS OF AMERICA AND THE INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA

Dated: April 24, 1971
Effective: August , 1971

The United Steelworkers of America, hereinafter called "the Steelworkers", and the International Union of District 50, Allied and Technical Workers of the United States and Canada, hereinafter called "District 50", hereby agree that District 50 and its Local Unions in the United States and Canada, shall become merged with the Steelworkers on the terms and conditions hereinafter set forth.

ARTICLE I. Authorization for the Agreement and Effective Date

On behalf of the Steelworkers, this agreement has been authorized by its Fifteenth Constitutional Convention held in September, 1970, and has been approved by its International Executive Board. On behalf of District 50, this agreement has been authorized and approved by its International Executive Board, and is subject to ratification by its Fourth Constitutional Convention to be held in August, 1971. If this agreement is so ratified, it shall become effective upon ratification, but if this agreement is not so ratified, it shall be null and void and of no effect.

ARTICLE II. Declaration of Purposes

A. The fundamental purpose of this agreement is to unite and strengthen the members of the two organizations for more effective bargaining with the employers and for more effective

organizing in their affiliated industries. This agreement is particularly appropriate in light of present conditions under which employers are merging and forming conglomerates, and in light of present economic conditions.

B. It has been possible for the officers of both organizations to meet and negotiate this merger agreement in an atmosphere of good will and mutual respect. Each organization has recognized more and more, the contributions of the other to the welfare of the workers in their affiliated industries. Above all, they know that unity between the two organizations will bring fresh organizing and bargaining strength to the Steelworkers and to its Local Unions and members in affiliated industries. It will enable District 50 officers and staff, its Local Unions, and its members, joined with the Steelworkers, to devote even greater effort and resources to the essential tasks of organizing and improving the wages, hours, working conditions and security of all workers in the industries within its jurisdiction. Unity of the two organizations will also bring other gains in the areas of legislaton, political action, human relations, civil rights and community affairs.

ARTICLE III. Issuance of Charters by the Steelworkers to District 50 Local Unions

A. As of the effective date of this agreement, without charter fees or any other pre-condition, the Steelworkers shall issue charters to all existing District 50 Local Unions (as then constituted) in the United States and Canada to replace and supersede the charters theretofore issued to them by District 50. All members of all such Local Unions shall thereupon be deemed, for all purposes, to be members of the Steelworkers.

B. The Local Unions chartered pursuant to Section A of this Article shall be governed in all respects by the Steelworkers' Constitution, its standard By-Laws for Local Unions, its Local Union Elections Manual, and its policies, except that:

1. Any Local Union which, as of the effective date of this agreement, has higher initiation fees and dues than the initiation fees and dues presently fixed by the Steelworkers' Constitution, may continue to maintain such initiation fees and dues, but shall thereafter increase them only in the event of, and in conformity with, any requirement of or subsequent amendment to the Steelworkers' Constitution increasing, or permitting an increase in initiation fees and dues to an amount higher than the initiation fees and dues maintained by such Local Union as of the effective date of this agreement.

2. The officers of Local Unions of District 50 to be elected and qualified in the June, 1971 Local Union elections in District 50, shall serve until June, 1973, when election of Local Union officers for three (3) year terms are next required to be held under the Steelworkers' Constitution. As concerns such June, 1973 elections at former Local Unions of District 50, only regular meetings of the Local Union held on or after the effective date of this agreement shall be taken into account in determining compliance with the meeting attendance requirement of the Steelworkers' Constitution for eligibility for Local Union office. If any such Local Union election is required after the effective date of this agreement, and prior to June, 1973, the meeting attendance requirement of the existing District 50 Constitution shall be applicable instead of the meeting attendance requirement of the Steelworkers' Constitution for eligibility for Local Union office.

3. In satisfying the eligibility requirements of the Steelworkers' Constitution for International or Local Union office, a Local Union shall be deemed to have been in existence from the time of its original charter by District 50, and every member of District 50 as of the effective date of this agreement, shall be credited with his period of good

standing in District 50, employment within its jurisdiction, and attendance at his Local Union meetings as if such had taken place in the Steelworkers and within its jurisdiction.

C. Nothing in this agreement shall impair the right, title, or interest, of any Local Union of District 50 in its books, records, monies, assets, and property as of the effective date of this agreement, or affect any of its obligations arising as of or prior to the effective date of this agreement, under the Constitution of District 50 or otherwise. Such right, title, interest, and obligations shall continue, upon the chartering of the Local Union by the Steelworkers as of the effective date of this agreement, subject to the provisions of the Steelworkers' Constitution, standard By-Laws for Local Unions, and policies relating to Local Unions.

ARTICLE IV. Termination of District 50's Separate Existence

A. As of the effective date of this agreement, District 50 shall be merged with the Steelworkers and the separate existence of District 50 shall be terminated, except that the International Executive Board of District 50 shall thereafter remain in existence and its officers shall thereafter remain in office and retain such power, right, privilege and authority only for any purpose incidental and necessary to carry out this agreement or to deal with property, certification, collective bargaining, checkoff or other rights of District 50 in accordance with and pursuant to this agreement, including the power, right, privilege and authority, in the name of and acting for District 50 or in such other manner as may be required, to execute and deliver, or to cause to be executed and delivered, any deed, document or other instrument, or to take any other action necessary to carry out this agreement.

B. As of the effective date of this agreement, District 50's General Fund, Strike Fund, its books and records, and all of District 50's real and personal property and its other assets, receivables and monies, of whatever nature and wherever

situated, held by it in trust or otherwise or over which it has any power of appointment, or in which it has any interest, legal or equitable, and all powers, privileges and rights which are now or may hereafter be vested in District 50 or in any of its officers as its trustees, shall be transferred to and vested in the Steelworkers. The Steelworkers shall thereupon assume and become liable for all of District 50's debts and other obligations as if incurred by it.

C. District 50 represents that, as of the date of this agreement, it is a party to certain suits, actions and proceedings which are set forth on lists given to the Steelworkers by District 50, but has no judgments outstanding against it, and is not in violation of any judgment heretofore issued in any suit, action or proceeding. Upon the termination of District 50's separate existence, the Steelworkers shall be substituted for District 50 as a party to any suit, action, or proceeding in which District 50 may then be a party and in any order then outstanding against it or in its favor as if the Steelworkers had originally been such a party or been named in such order, and the officers and International Executive Board of District 50 shall execute any transfer, deed, authorization, release, document or other instrument or take any other action necessary to effect such purpose.

D. Before the effective date of this agreement, District 50's International Executive Board or its International Convention, as the case may be, shall decide all appeals pending before it, and all timely notices of appeal from decisions of the Board theretofore filed with it and not heard by the District 50 Convention shall be referred to the Secretary-Treasurer of the Steelworkers for action by the next regular convention of the Steelworkers. Notices of appeal from decisions by District 50's International Executive Board or by any of its Local Unions rendered in the month of August, 1971, and not heard by the appropriate District 50 appellate body, may be filed with the Secretary-Treasurer of the Steelworkers within thirty (30) days

of the decision and shall be processed in accordance with its Constitution, except that the merits of such appeals shall be decided on the basis of Distict 50's Constitution.

1. Disciplinary cases initiated in any District 50 Local Union on or after the effective date of this agreement shall be governed in all respects by the Steelworkers' Constitution, whether or not such cases relate to acts or events which occurred before such date, provided that no member or Local Union officer of District 50 may be disciplined for violating the Steelworkers' Constitution prior to the effective date of this agreement, unless such violation would also have been a violation of District 50's Constitution.

E. The officers and the International Executive Board of District 50 shall take all action necessary to effectuate and implement this agreement.

ARTICLE V. Outstanding Bargaining Rights, Certifications, Existing Agreements with Employers, Checkoff Provisions and Authorizations, and Procedures Relating to Collective Bargaining

A. Nothing in this agreement shall affect or impair any bargaining rights of District 50 or any of its Local Unions, any certification granted by any government board or any other agency to District 50 or any of its Local Unions, or their powers, rights, privileges, benefits, authority, duties and responsibilities under any of their collective bargaining agreements (including, but not limited to, health, welfare, insurance, pension, death benefit, vacation and other such agreements) with employers, and checkoff provisions and authorizations, except that, as of the effective date of this agreement:

1. All powers, rights, privileges, benefits, authority, duties and responsibilities vested in District 50 pursuant to such bargaining rights and certifications, and pursuant to

such collective bargaining agreements and checkoff provisions and authorizations to which District 50 is a party or beneficiary as of said date, and the right to enforce same, shall be vested in the Steelworkers as though it and not District 50 had originally been named as a party thereto or beneficiary thereof.

2. All powers, rights, privileges, benefits, authority, duties and responsibilities vested in a District 50 Local Union pursuant to such bargaining rights and certifications, and pursuant to such collective bargaining agreements and checkoff provisions and authorizations to which such District 50 Local Union is a party or beneficiary as of said date, and the right to enforce same, shall continue to be vested in such Local Union (as chartered by the Steelworkers) as though it had been a Local Union of the Steelworkers when such powers, rights, privileges, benefits, authority, duties and responsibilities originally vested.

3. The Constitution and policies of the Steelworkers shall, as of the effective date of this agreement, be applicable to all such bargaining rights, certifications, collective bargaining agreements, and checkoff provisions and authorizations.

4. Bargaining procedures, the establishment and operation of industry conferences, the taking and timing of strike authorizations and the procedure for ratification of agreements with employers shall be in accordance with and governed by Resolution 24, which was adopted at the International Convention of the Steelworkers on September 22, 1966, and is attached as Exhibit "A" to this agreement, and the Constitution and policies of the Steelworkers. Steps shall be taken pursuant to Resolution 24 to develop the most effective collective bargaining mechanisms and policies for District 50's members and Steelworkers' members employed in common industries.

ARTICLE VI. Staff of District 50

A. Subject to the Constitution and policies of the Steelworkers, and the requirements of applicable collective bargaining agreements to which the Steelworkers is a party, effective September 1, 1971, the District 50 officers and employees, as listed in Exhibit "B" to this agreement, hereinafter collectively called "the staff", shall become employees of the Steelworkers in all respects. They shall have the positions and salaries specified in Exhibit "B", subject to the conditions relating to the salaries of certain of such employees set forth in an exchange of letters between the two organizations. The arrangements relating to certain other employees of District 50 are set forth in said exchange of letters.

1. Subject to the provisions of this agreement, all members of the staff, as employees of the Steelworkers, shall have the same rights, privileges, and benefits, and shall be subject to the same obligations, as all other employees of the Steelworkers in their respective classifications. For all the purposes of seniority, the members of the staff shall be fully credited with their service in District 50 as shown in Exhibit "B", subject to the provisions of the Steelworkers' agreements with the Staffman's Organizing Committee, the Steelworkers International Employees Independent Union or any other bargaining agent.

B. As of September 1, 1971, the Steelworkers shall:

1. Make provision for the payment of the benefits to which the individuals listed in Exhibit "B" are entitled under the District 50 Pension Plan or the District 50 provisions for disability benefit payments. In addition, the Steelworkers will make provisions for the life, hospital and medical insurance coverage, including reimbursement of premium payments to those eligible for Medicare Part B coverage, presently provided by District 50 for such individuals and their dependents.

2. Credit all members of the staff as employees of the Steelworkers, with "credited service" under the Steelworkers' Staff Pension Plan in amounts to which they are entitled by reason of their District 50 service as shown in Exhibit "B".

UNITED STEELWORKERS OF AMERICA	THE INTERNATIONAL UNION OF DISTRICT 50, ALLIED AND TECHNICAL WORKERS OF THE UNITED STATES AND CANADA
/s/ I. W. ABEL	/s/ ELWOOD MOFFETT
International President	*International President*
/s/ Illegible	/s/ Illegible
International Secretary-Treasurer	*International Secretary-Treasurer*
/s/ Illegible	/s/ Illegible
International Vice President	*International Vice President*

Dated: April 24, 1971

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